

**CAMDEN ZONING BOARD OF APPEALS**  
**MINUTES of MEETINGS**  
**May 10, 2012**

**PRESENT and VOTING:** Chair: Frank Toole; Members: Tom Laurent, Leonard Lookner, and George Wheelwright

**ABSENT:** Member Sam Smith; Alternate Members Jean Blair and Linda Norton; and CEO Steve Wilson

The Meeting was called to Order at 5:10 pm in the Washington Street Conference Room. There will be four regular members voting, and the Chair informed the Applicant's representative that any vote of approval would have to be at least 3 to 1; a tie vote would lose; the Applicant's Attorney, Rendle Jones, agreed to move forward under those conditions.

**2. SPECIAL EXCEPTION: LOW IMPACT USE - Change of Use from Homestay to Inn**

Michael Salmon: Map 120 Lot 19: Traditional Village District (V)  
d.b.a.: The Hearthstone Inn, 12 Free Street

**PUBLIC HEARING**

Mr. Toole read the procedure for the Public hearing.

*Declaration of Conflict*

Members were asked to declare any possible conflicts of interest they might have regarding the application before them; there were none.

*Standing*

The Applicant's Attorney Rendle Jones confirmed that the Applicant is the owner of the property involved, and that he is here to represent Mr. Salmon in his absence. The Chair found this is sufficient to give Mr. Jones standing to make the argument on Mr. Salmon's behalf.

*Code Enforcement Officer's Summary*

In preparation for his absence, the CEO had provided a memorandum to the Chair dated 5/8/2012, summarizing the Application and containing his recommendation regarding standards for approval. The Chair read that memorandum aloud, and it was entered into the record as Exhibit A.

Mr. Salmon is building a new home and will be residing there. 12 Free Street is currently run as a homestay in conjunction with the Salmon's primary business, the Hearthstone Inn. Once the Salmon's leave 12 Free Street they wish to continue renting rooms there but cannot conduct a homestay as absentee owners. They are requesting a change to an Inn as a Low Impact Use which will allow them to continue to rent the same two sleeping rooms. Their living quarters will be used to provide the requisite innkeeper's quarters required by the Ordinance.

1 *Applicant's Summary*

2  
3 Mr. Jones agreed with the Code Enforcement Officer's representation of the Application.  
4 Mr. Salmon has no plans to change the activities that occur there, but he hopes to keep his  
5 options open if he might. In terms of activities that occur there today; there are two guest rooms  
6 and that is all he is currently proposing. As far as the Special Exception criteria go, there would  
7 be no additional demands on the facilities, and no activities are proposed to be changed. Neither  
8 do they believe that the Standards set forth in Section 4 of the Special Exception permit will be  
9 impaired in any way.

10  
11 In the Application that the Board has, Mr. Salmon addresses specifically the Low Impact  
12 Standards and provides his answers. This Application packet dated April 9, 2012, was  
13 previously distributed by the Code Enforcement Officer and is labeled Exhibit B.

14  
15 The Chair asked if Mr. Jones had previously seen the letter dated May 3, 2012, from  
16 Attorney Paul Gibbons; he had.

17  
18 *Questions of the Applicant*

19  
20 Mr. Lookner:

- 21 • Is it the Salmon's intention to intend to lease their dwelling unit once they have moved  
22 into their new home, or to use it as quarters for the innkeeper? Mr. Jones replied that it  
23 will most probably be the latter since the Ordinance provides that they can only have two  
24 lodging rooms to let, and they are already having those units occupied by guests now;  
25 they cannot expand.  
26 • Will there be some compensation for staying in that dwelling unit, or will lodging there  
27 be part of a salary? Mr. Jones has not had the opportunity to discuss this issue with Mr.  
28 Salmon in the two days since he has been asked to handle this Application.

29  
30 Mr. Lookner explained that his reason for asking is that it seems that the owner's unit is  
31 being "leased" long term in return for work as an innkeeper; the result is three actual lodging  
32 units – two short term lodging room and one longer term lodging unit. Mr. Toole agreed that the  
33 Board will have to take a look at actual definitions to resolve this question when they get to that  
34 point in the review.

- 35  
36 • Asked the lot size. It is .31 acres; less than the 2 acres required of an inn in the Village  
37 District which would make an inn a non-conforming business.

38  
39 *Comments from the Public*

40  
41 Leon Bausch: 21 Clam Cove Drive, Rockport: A friend of Mr. Salmon's who had discussed this  
42 issue and knows that Mr. Salmon intends to place an employee in the owner's unit on a long-  
43 term basis to help with innkeeper's duties at 12 Free Street, as well help in various capacities at  
44 the other properties Mr. Salmon owns and operates.

45  
46 No one else came forward.

47 **MOTION by Mr. Lookner seconded by Mr. Laurent to close the Public Hearing.**

48 **VOTE: 4-0-0**

1 *Article III: Applicable Definitions*

2  
3 **“LODGING:** An overnight accommodation with sleeping arrangements provided for a fee. For  
4 the purposes of this Ordinance, all lodgings shall be divided into the following categories:

5  
6 **HOMESTAY:** A use that is accessory and incidental to the primary use of a dwelling as a  
7 residence and that (1) provides one or two furnished bedrooms for rent to guests; (2) is operated  
8 by the family or person residing permanently in the home; (3) employs no persons who are not  
9 residing permanently in the home; (4) exhibits no signs and conducts no advertising other than  
10 being listed with a referral service; (5) provides all parking onsite; and (6) gives no other exterior  
11 display or indication of the activity. A maximum of one homestay is allowed per multifamily  
12 building...

13  
14 **INN:** A type of lodging based in the permanent dwelling of the person or family acting as  
15 proprietor and that accommodates for a fee travelers and other transient guests who are staying  
16 for a limited duration. An inn (1) has ten or fewer sleeping rooms offered for rent; (2) does not  
17 provide full service dining, but may serve breakfast and/or an afternoon snack to guests only, and  
18 (3) may be licensed to host up to eight special functions per year, including the serving of meals  
19 to such gatherings, provided that written notification is provided to the Code Enforcement  
20 Officer and that parking for such functions is provided on-site or through other off-street  
21 arrangements. An inn located on a nonconforming lot shall be subject to the terms of Article VI,  
22 Section 2(2)(c) of this Ordinance.”

23  
24 **“LOW IMPACT USE:** A commercial or other nonresidential use not otherwise allowed in a  
25 zoning district that shares a structure with a dwelling unit and that complies with the standards of  
26 Article VII, Section 4, (9), of this Ordinance, which standards are intended to assure that the use  
27 fits into its surroundings without adverse impact while allowing a reasonable degree of diversity  
28 characteristic of village settings. A low impact use is not required to meet the standards of  
29 Article X, Part II, Section 7”.

30  
31 *Article VI, Section 2(2)(c)*

32  
33 *Article VI Nonconformance: Section 2. Nonconforming Lots (2) Lots with Structures*

34  
35 (c) An inn located on a lot that is less than two acres in the Traditional Village District, shall not  
36 add sleeping rooms offered for rent beyond those legally existing as of the date of enactment of  
37 this ordinance, nor shall it be used more intensely with respect to functions, services, or similar  
38 activities otherwise allowed in inns beyond those being routinely and legally offered as of the  
39 date of enactment of this ordinance.

40  
41 *Discussion:*

42  
43 Mr. Lookner: How can the ZBA grant a function on a lot that is non-conforming because an inn  
44 requires two acres in the Village District if it was not in existence prior to 2005? He believes  
45 this is way beyond the ZBA’s jurisdiction. Mr. Toole suggests that the Board needs to look at  
46 two sets of criteria to make the determination:

47  
48 1<sup>st</sup>: The Special Exception Criteria that is applied in all applications for Special Exceptions  
49 (Article VII Section 4); and 2<sup>nd</sup>: The criteria in the Village District for a Low Impact Use  
50 (Article VIII Section 7 C. 10: Uses permitted as Special Exceptions): The following commercial

1 uses: “(10) Low impact uses, as defined in this Ordinance and not otherwise allowed in this  
2 district, on lots that are located wholly or in part within 500 feet of a business or industrial  
3 district (B-1, B-2, B-3, B-H, B-TH, B-R, B-TR or I), and that meet the terms of Article VII,  
4 Section 4(9).”

5  
6 Mr. Toole continued: According to the Application the property is in the Village District  
7 adjoining the Hearthstone Inn which is in the B-3 District. After finding this fact, the Board is  
8 directed to consider Article VII, Section 4 Special Exceptions (9) Special Criteria for Low  
9 Impact Uses:

10  
11 **MOTION by Mr. Toole seconded by Mr. Wheelwright that the property in question is**  
12 **located within 500’ of a Business District.**

13 **VOTE: 4-0-0**  
14

15 The Chair read the letter covering the Application from Mr. Salmon into the record (Exhibit B)  
16 at each item:

17  
18 *Article VII, Section 4 Special Exceptions (9): Special Criteria for Low Impact Uses*  
19

20 A low impact use, as defined in this Ordinance, shall:

21  
22 (a) Be located within a building that also includes one or more dwelling units;  
23 Mr. Salmon states that there is an owner’s quarters serving as a residence.

24 **MOTION by Mr. Lookner seconded by Mr. Wheelwright that the Board Find as a Fact**  
25 **that the property in question has at least one dwelling unit.**

26 **VOTE: 4-0-0**  
27

28 (b) Occupy no more than 2,000 square feet of total floor area;  
29 Mr. Salmon states that the two guest rooms total 984 SF in area.

30 **MOTION by Mr. Lookner seconded by Mr. Wheelwright to Find as a Fact that less than**  
31 **2000 SF of floor area are included in the Low Impact Use.**  
32

33 (c) Not cause an existing building, whether or not actually occupied by a dwelling unit, to be  
34 demolished for the purpose of creating a low impact use;

35 Mr. Salmon states there will be no major changes to the building.

36 **MOTION by Mr. Lookner seconded by Mr. Wheelwright that based on testimony, both**  
37 **written and oral, the use will not lead to any change in the structure or any demolition, the**  
38 **Board Finds as a Fact that this item is met.**

39 **VOTE: 4-0-0**  
40

41 (d) Generate no more than a daily average of 20 vehicular trip ends on week days, based on a  
42 data contained in the latest edition of "Trip Generation," published by the Institute of Traffic  
43 Engineers, or, if the Code Enforcement Officer is unable to classify the proposed activity into  
44 one of the uses listed in this reference work, based on the written opinion of a professional traffic  
45 engineer;

46 Mr. Salmon outlines the general comings and goings of guests as totaling perhaps six trips per  
47 car per day.  
48

1 **MOTION by Mr. Wheelwright seconded by Mr. Lookner to Find as a Fact based on the**  
2 **written testimony from the Application that the proposed change of use will not generate**  
3 **more than 20 trips per day.**

4 **VOTE: 4-0-0**

5  
6 (e) Have no more than one curb cut, which shall have a maximum width of 20 feet;  
7 Mr. Salmon writes that there is one curb cut on the property.

8 **MOTION by Mr. Wheelwright seconded by Mr. Lookner to Find as a Fact that based on**  
9 **written testimony from the Applicant the Application does not run afoul of Subsection 9(e).**

10 **VOTE: 4-0-0**

11  
12 (f) Require, in addition to the required number of spaces for the dwelling unit(s), no more than  
13 five parking spaces, based on the requirements of Article X, Part II, Section 4 or, if the type of  
14 use cannot be classified as one of the uses listed in Section 4, based on the average rates per  
15 1,000 square feet of building area for peak parking spaces occupied as identified in the latest  
16 edition of "Parking Generation," published by the Institute of Transportation Engineers;  
17 Mr. Salmon states that there are five parking spaces on the property and no changes proposed.

18 **MOTION by Mr. Wheelwright seconded by Mr. Laurent to Find as a Fact that the written**  
19 **testimony of the Applicant shows that there will be no more than five parking spaces.**

20 **VOTE: 4-0-0**

21  
22 (g) Locate any on-site parking to the rear or side of the building, with no such parking between  
23 the building and any street or in the lot's required front yard;

24 Mr. Salmon writes that the parking at the property is at the rear.

25 **MOTION by Mr. Toole seconded by Mr. Wheelwright that the Applicant states that there**  
26 **will be no parking on the street or the front yard, but in the rear as currently exists.**

27 **VOTE: 4-0-0**

28  
29 (h) Maintain a vegetated buffer between its on-site parking lot and adjacent properties in  
30 compliance with Article X, Part II, Section 3, Screening and Landscaping.

31 Mr. Salmon states that "There is a vegetated buffer between the parking lot and adjacent  
32 properties."

33  
34 Discussion: There were three pictures labeled "A", "B" and "C" attached to the May 3 letter  
35 from Attorney Paul Gibbons on behalf of his client, abutter Paul Denckla. Mr. Wheelwright  
36 notes that the letter says there is a "factual error" in the application regarding the existence of a  
37 buffer, and that there is a "clear line of sight through which sound passes between the Denckla  
38 property and the Salmon property. The pictures show a pine border between Mr. Salmon's two  
39 properties, but there is one portion of the fenced area shown in "B" that is not vegetated. Mr.  
40 Toole suggested that there does appear to be vegetation but that it may not be sufficient. At this  
41 point, Mr. Denckla introduced himself and offered clarification that he can see people in the yard  
42 and can hear anyone in the parking area – there is a visual buffer but there is no buffer for sound.

43  
44 **MOTION by Mr. Lookner seconded by Mr. Toole to enter the letter dated May 3, 2012,**  
45 **from Paul Gibbons to the Code Enforcement Officer on behalf of his client, Paul Denckla,**  
46 **of 10 Free Street into the record as Exhibit C.**

47  
48 Mr. Wheelwright asked Mr. Denckla to clarify the points of view of each picture. Referring to  
49 the pictures he noted that there were three rental units at 12 Free Street: The main unit that is  
50 under review this evening; a small one-unit building and a blue building visible in Picture "C"

1 that has either 2 or 4 units for staff. Mr. Wheelwright asked for a copy of the Tax Map so he  
2 could see the layout.

3  
4 Mr. Toole confirmed that Mr. Denckla's opinion was that there is a buffer between the  
5 properties, but it is not adequate to buffer sound; Mr. Denckla confirmed that this was accurate.  
6 Mr. Toole went on to say that in many cases the Board has imposed specific conditions on the  
7 Applicant in the granting of Special Exceptions. For example, they have required that an  
8 applicant had to provide or enhance a buffer. He asked Mr. Denckla if he thought there was a  
9 method that would provide buffering of sound for his property. Mr. Denckla replied that his  
10 concerns was with the possibility of having *any* of the eight special events that would be  
11 permitted an inn; any extra sounds in this small neighborhood would be a negative impact. He  
12 has no concerns if the property is operated as it is now even if it is by someone other than the  
13 Salmons. He is especially concerned that any special event would be held in the space shown on  
14 Picture "C", and that would basically be in his back yard.

15  
16 Mr. Wheelwright asked Mr. Jones to indicate on the Tax Map which property is Mr. Salmons  
17 and which is Mr. Dencklas. That map was also used to locate the exterior lawn area and parking  
18 areas with relation to the Denckla property. The issue of the Salmon's exterior deck, which is  
19 right along the Denckla property line, was raised. Mr. Denckla noted that the Salmons are very  
20 respectful of their neighbors when they use the deck; he is concerned that the change of use may  
21 change that.

22  
23 Mr. Toole returned to Item (h) and asked Mr. Denckla if he agreed with the statement that there  
24 was vegetation along the boundary as required, but that is not adequate. Mr. Denckla, referring  
25 to Picture "B" noted that there is *no* vegetation – it is an open line of site across his lawn to the  
26 parking area of the property.

27  
28 **MOTION by Mr. Wheelwright seconded by Mr. Toole that there appears to be no**  
29 **vegetated buffer between the on-site parking area in the rear and the neighboring**  
30 **properties based on the photos provided and the abutter's comments.**

31 **VOTE: 3-1-0 with Mr. Laurent opposed**

32  
33 Mr. Toole noted that the point of difference here is whether there is no vegetation and whether  
34 there is vegetation but that it is not adequate. All agreed that the buffer does not meet the  
35 applicable standards of Article X:

36  
37 *Article X Performance Standards Part II Section 3 Screening and Landscaping: (3) Multifamily*  
38 *and Nonresidential Uses Abutting Residential Uses or District:*

39  
40 “(b) Where natural buffering does not exist, or is not possible to be retained, or is not sufficient  
41 to achieve an effective visual screen, the required side and back yards shall be landscaped to  
42 provide a visual screen between uses. The buffer shall be a minimum of 6 feet wide and may be  
43 interrupted only by a single pedestrian pathway at each abutting property line no more than five  
44 feet wide

45  
46 The Board agreed that this standard is not met and the application is not in compliance with item  
47 (h). Mr. Wheelwright withdrew his Motion and the following was offered instead:

1 **MOTION by Mr. Lookner seconded by Mr. Laurent to Find as a Fact that this Board**  
2 **recognizes that the vegetation is inadequate to satisfy the Screening and Landscaping**  
3 **requirements of Article VII Section 4 9(h) of the Ordinance.**  
4

5 Discussion: Mr. Jones noted that standard requires compliance with Article X Part II Section  
6 3(2)(b)2. The Board reviewed the Article and agreed. Mr. Denckla interrupted to suggest that  
7 this was an opportunity to add a tree which is required. He also reiterated his concerns about  
8 allowing Special Events on a lot that was so small.  
9

10 **VOTE: 4-0-0**  
11

12 Mr. Toole stated that he does not believe that this vote defeats the application because the non-  
13 compliance can be cured.  
14

15 (i) Not generate hourly sound levels resulting from routine operations in excess of 60 dBA as  
16 measured at the property line;

17 Mr. Salmon states that noise issues are not a problem with his particular clientele.  
18

19 Discussion: Will the current character of noise be unchanged is the use stays pretty much the  
20 same as it is now? Mr. Denckla interrupted again to say that as long as they continue to rent out  
21 the same two rooms under the same conditions, everything would be fine. With a change of  
22 access that would allow guests the use of the deck would definitely be something that should be  
23 excluded because that is something that would change the character of the business. The current  
24 character of the noise will not be changed as long as the use of the deck is not changed and is  
25 kept exclusively for the use of the innkeepers.  
26

27 Mr. Lookner believes the Application will create a conflict with this standard because the  
28 addition of eight possible functions a year permitted for an inn will generate more noise. Mr.  
29 Toole noted that the Board has the responsibility to impose conditions of approval, and Mr.  
30 Lookner agreed and asked if this was the place to address special events. Mr. Toole noted that  
31 routine operations, which includes the renting of the rooms, cannot exceed 60 dBA. Mr. Jones  
32 noted that the standard is used for enforcement purposes and not as an approval criterion: if the  
33 operation of the property as an inn will not routinely exceed that limit then the approval standard  
34 is met. There does not need to be a condition that this level cannot be exceeded.  
35

36 Mr. Toole asked if the Board could find that if the Low Impact Use of operating as an inn with  
37 the same two rooms rented out, as based upon the statement of the Applicant, will not routinely  
38 exceed the noise exceed 60 dBA's  
39

40 Mr. Wheelwright wondered if the eight events per year could be presumed to be routine, and  
41 that it could also be presumed that the functions would generate more than 60 dBA's. Mr. Toole  
42 suggested that this calls into speculation the intended use of the property – will the owner hold  
43 these special functions as a certainty? He also agrees that the Board can impose a condition that  
44 would not allow these functions, but they must make a Finding regarding noise levels.  
45

46 **MOTION by Mr. Wheelwright that the Board could Finds that the normal operation of the**  
47 **property as an inn with no special functions will not result in excessive noise.**  
48

49 Mr. Denckla interrupted Mr. Wheelwright's Motion to add to the Motion: "or the use of  
50 deck by hotel guests" is also not allowed.

1  
2 Mr. Wheelwright went to Page Two of Mr. Gibbon's letter which discussed the impact of  
3 Special Events on his client's quiet enjoyment of his home.  
4

5 The Board discussed wording of a positive Motion that would address the potential that  
6 noise levels would exceed the standard if special events were to be held. Mr. Denckla wondered  
7 if they could say that every special event would cause the level to be exceeded, and not refer to  
8 potential.  
9

10 Mr. Laurent noted his strong belief that a Low Impact Use cannot be an increase in use –  
11 and eight special functions a year is a more intensive use. The sound level isn't what should  
12 trigger a condition not allowing special functions; they should not be allowed because they are  
13 an increase in use. Mr. Lookner agrees that an inn will be a more intense use of the property, and  
14 he does not believe they can approve this Application. Mr. Toole reminded the Board of their  
15 responsibility to make Findings. Mr. Laurent suggests that a Low Impact Use cannot include an  
16 increase in use. Mr. Wheelwright asked if that can be tied to the item they are discussing. Mr.  
17 Jones stated the Ordinance does not say that a more intense use is not permitted. This is an  
18 Application for a Low Impact Use and but the Board needs to make a favorable finding or make  
19 an approval with conditions. He does not believe there is evidence that shows this standard will  
20 be violated or enforced by the Code Enforcement Officer.  
21

22 **MOTION by Mr. Wheelwright seconded by Mr. Lookner that inasmuch as an inn is**  
23 **allowed up to eight special functions a year the Applicant's Application would not satisfy**  
24 **Item i because these functions would probably exceed 60 dBA.**

25 **VOTE: 4-0-0**  
26

27 Mr. Denckla asked if Mr. Wheelwright would be willing to amend his Motion to include use of  
28 the deck. Members of the Board responded they would get there later.  
29

30 The rest of the criteria were approved 4-0  
31

32 (j) Not be open for business before 7 a.m. or after 8 p.m.;

33 (k) Comply with the sign regulations of Article XI of this Ordinance relating to residential  
34 districts;

35 (l) Neither make nor receive shipments in trucks more than 5 times a week;

36 (m) Store materials or display or sell goods only within a fully enclosed building;

37 (n) If new construction is involved, achieve a residential appearance, including a roof pitch of at  
38 least six in 12 (or 50 percent) and the use of exterior materials typical of residences in the area.  
39  
40

41 The Final Motion was: May 10, 2012 Special Exception 12 Free Street:  
42

43 By a vote of 4-0 the Board of Zoning Appeals approved the following Motion by Mr. Laurent  
44 and seconded by Mr. Wheelwright:  
45

46 The Board grants a Special Exception for a Low Impact Use of operating at this property as an  
47 Inn subject to: the current two rental rooms not being expanded upon; the current dwelling unit  
48 in the property being maintained as a dwelling unit for a proprietor; the licensed eight special  
49 events that are associated with the character of an Inn are not to be allowed for this property; it  
50 meets screening meets the requirements of Article X Part II Section 3(b)(2) of the Ordinance; the



1 use of the deck area be restricted to use by the proprietor and not to the guests of the inn; and  
2 there will be no additional outdoor activities by guests of the inn including use of the deck than  
3 occur presently.

4  
5  
6 **MINUTES**

7 There were no minutes to review.

8  
9 There being no further business before the Board they adjourned at 6:30 pm.

10  
11 Respectfully Submitted,

12  
13  
14  
15 Jeanne Hollingsworth, Recording Secretary